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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/510,086

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Andreas Harz

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4228

25255

7590

12/19/2008

CLARIANT CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
4000 MONROE ROAD
CHARLOTTE, NC 28205

EXAMINER

ABU ALI, SHUANGYI

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

12/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/510,086	Applicant(s) HARZ ET AL.	
	Examiner SHUANGYI ABU ALI	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 6-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 6-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/09/2008</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/09/2008 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear as to what the amount is referring to since the fertilizer is not applied but rather the pigment (see claim 1). The Examiner treats claim 9 as the amount of the pigment preparation is in an amount of 0.00001 to 0.1%, based on the fertilizer weight.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 1-2, 6-8 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over combined teaching of WO 00/76649 A1 to Lofgren et al. and U.S. Patent No 6,262,153 to Webster et al.

Regarding claims 1-2 and 12-13, Lofgren et al. disclose a method of coating fertilizer particles with a coating composition comprising talc and mineral oil. The amount of the talc is in the range of 75-0.2 wt% and the oil or wax amount is in the range of 25-99.8%. But they are silent about the use of an organic pigment in the composition.

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Webster et al., also drawn to wax containing compositions comprising organic pigment to coat fertilizer particles, disclose organic pigment, such as C.I. pigment yellow 74, is used in the wax composition in a range of less than 25%. (col. 5, line 48; col. 6, line 19-20)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to use organic pigments in the composition as applicant set forth in claim 1, motivated by the fact that Webster et al., also drawn to a coating composition for fertilizer particles, disclose that organic pigment can be used provide color for the fertilizer. The use of a coloring media to provide a color to the composition is clearly within the scope of the skilled artisan. In addition and assuming arguendo, talc can be considered a pigment and the substitution of one type of pigment for another is clearly within the scope of the skilled artisan.

Regarding claim 6, Lofgren et al. disclose a process of coating fertilizer particles, which comprise of nitrogen, phosphate and potassium (page 5, line 15).

Regarding claim 7, Lofgren et al. disclose a process of coating fertilizer particles comprising grinding additive added into the composition (page 4, line 30).

Regarding claim 8, Lofgren et al. disclose a process of coating fertilizer particles comprising that talc particles are dispersed in oil (page 5, line 29).

Regarding claim 11, Lofgren et al. disclose a process of coating fertilizer particles comprising of the step of diluting the composition with an organic liquid (abstract).

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Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over combined teaching of WO 00/76649 A1 to Lofgren et al. and U.S. Patent No 6,262,153 to Webster et al. as applied above and further in view of WO 97/19030 to Tilokavichai et al.

Regarding claim 9, combined teaching of Lofgren et al and Webster et al. disclose a method of coloring fertilizer set forth above, but they are silent that the amount of the pigment composition is used to color the fertilizer as applicant set forth in claim 9.

However, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to coat the fertilizer as applicant set forth in the claim 9, motivated by the fact that Tilokavichai et al., also drawn to coating fertilizer, disclose pigment composition amount in the range of 0.1-1.5 wt% is used to color fertilizer (abstract).

Regarding claim 10, Lofgren et al. disclose a process of coating fertilizer particles comprising of the step that the coating composition is applied to the fertilizer particles through spraying (abstract).

Response to Arguments

Applicant's arguments with respect to claims 1-2 and 6-13 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that applicant replaces the transition term "comprising" to "consisting of". The Examiner respectfully submits that the talc used in the coating composition can be treated as an additive and amount of 0-5% additive is permitted in the instant application. Finally, it is to be noted that a new combination rejection has been applied which clearly establishes that the claimed invention is prima facie obvious.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHUANGYI ABU ALI whose telephone number is (571)272-6453. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Michael A Marcheschi/
Primary Examiner, Art Unit 1793

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